



Freedom of Information Act Procedures

Issued by the EPA Acting Chief Freedom of Information Act Officer

Table of Contents

1. Purpose.....	1
2. Scope and Applicability	1
3. Audience	1
4. Overview.....	1
A. EPA FOIA Administration	1
B. The Freedom of Information Act.....	2
C. FOIAonline	2
D. Document Review Tools.....	2
5. Authority	2
6. Procedures.....	3
A. Intake Procedures.....	3
Step 1. Submission and Receipt of Requests.	3
Step 2. Intake and Initial Review of Incoming Requests.....	3
Step 3. NFO and Lead FOIA Program Intake Coordination.....	4
Step 4. Process Fee-Waiver and Expedited Processing Requests.....	4
Step 5. Determine the Processing Track and Fee Category.....	4
Step 6. Assign the Request to the Lead FOIA Program.....	5
B. Processing the Request	6
Step 7. Lead FOIA Program Review of the FOIA Request.....	6
Step 8. Assign Tasks in FOIAonline.....	7
Step 9. Estimate Processing Time and Determine Response Deadline.	8
Step 10. Estimate Fees.	9
Step 11. Determine Search Parameters and Additional Clarification.	11
Step 12. Collect Records.....	12
Step 13. Review Records.	133
Step 14. Authorized Official Approval and Awareness Notification.	15
Step 15. Upload Records to FOIAonline.	15
Step 16. Interim and Final Responses.....	16
Step 17. Finalize Processing Fees.	17
Step 18. Finalize Actions and Respond to Request.	18
7. Appeals and Litigation	18
8. Related Documents.....	18
9. Roles and Responsibilities	199
10. Definitions	22
11. Material Superseded	25
12. Additional Information.....	25

Freedom of Information Act Procedures

1. Purpose

These Freedom of Information Act Procedures (Procedures) outline the process for implementing the Freedom of Information Act (FOIA or statute), 5 U.S.C. § 552, at the U.S. Environmental Protection Agency's (EPA's or Agency's) Headquarters and Regional Offices, field offices, and EPA laboratories. These Procedures are intended to ensure that the Agency responds to FOIA requests in accordance with statutory requirements, the EPA FOIA Regulations, 40 C.F.R. Part 2, Subpart A (FOIA Regulations), the Policy, and applicable open government and transparency policies.

2. Scope and Applicability

These Procedures implement the EPA FOIA Policy (Policy). These Procedures focus on promoting accountability, encouraging timeliness, and ensuring the quality of EPA FOIA responses by outlining the statutory and regulatory requirements, as well as the policy, procedural, and processing steps that all EPA organizations should follow.

3. Audience

The audience for these procedures includes: all EPA organizations, officials, and employees; those who oversee contractors and grantees; and others operating on behalf of the EPA in accordance with their contract or grant.

4. Overview

A. EPA FOIA Administration

These Procedures define the term "FOIA Program" as each EPA Headquarters and Regional Office as a whole. For the Regional Offices, the term "FOIA Program" is not limited to each Office of Regional Counsel's office, division, or organization established to perform certain centralized FOIA functions, but rather refers to the entire regional office. Relatedly, these Procedures use the term "Lead FOIA Program" to identify the FOIA Program assigned to process the FOIA request by the National FOIA Office (NFO). Further, these Procedures use the term "Contributing FOIA Program" to identify a FOIA Program that is not assigned to process the request by the NFO but possesses records that are responsive to the FOIA request. Thus, in using the terms FOIA Program, Lead FOIA Program, and Contributing FOIA Program, these Procedures do not describe interactions between work units within the same EPA organization—except where indicated.

Each FOIA Program will designate a FOIA Coordinator or FOIA Officer to serve as the primary contact for the NFO and other FOIA Programs. Each FOIA Program shall employ a backup coverage system to ensure the timely processing of requests when the FOIA Coordinator or FOIA Officer is unavailable.

Each FOIA Program will submit updated local FOIA procedures to the NFO within 180 days of the Chief FOIA Officer issuing this document. *See* EPA FOIA Policy, 6.J. The Chief

FOIA Officer will approve each local FOIA procedure, except for the local FOIA procedures submitted by the Office of Inspector General (OIG). Each FOIA Program's local procedures are to be consistent with the FOIA, the EPA FOIA Regulations, the FOIA Policy, and these Procedures, and may add more detail, including detail on matters not covered or not fully covered by the Agency's FOIA Policy and Procedures.

B. The Freedom of Information Act

Congress enacted the FOIA in 1966. The statute gives any person the right to obtain access to federal agency records unless one or more of the nine exemptions or three law enforcement exclusions¹ contained in the statute protect such records, or portions of such records, from public disclosure. *See* 5 U.S.C. § 552(b). The FOIA applies only to administrative agencies within the federal Executive Branch.

C. FOIAonline

FOIAonline is an internet tool where requesters may submit FOIA requests. FOIAonline is also EPA's management and tracking system for FOIA responses. *See* EPA Records Schedule 0263, FOIAonline System (Jan. 31, 2016).

These Procedures do not provide detailed instructions for using FOIAonline. The Agency sponsors FOIAonline training for managers, supervisors, and staff, and has developed user guides that are available through FOIAonline and in the FOIA Toolkit located on the NFO's SharePoint site.

D. Document Review Tools

Relativity is EPA's standard document review platform for all records collected by an eDiscovery Division centralized search. EPA staff can access Relativity through a web browser from their office or from a remote location.

To review any records that are not collected by an eDiscovery Division centralized search, it is recommended that EPA staff use EPA-approved document review and redaction software, such as Adobe Acrobat Pro DC. Contact your local Information Security Officer or local Information Technology staff to obtain access to Adobe Acrobat Pro DC.

These Procedures do not provide instructions for using Adobe Acrobat Pro DC or Relativity for document review. EPA staff can access Relativity training and user guides through the eDiscovery Division's Relativity Resource Center on the eDiscovery Division's SharePoint site. EPA staff can access directions on using Adobe Acrobat Pro DC to review and redact documents in the FOIA Toolkit.

5. Authority

Freedom of Information Act, 5 U.S.C. § 552.

EPA FOIA Regulations, Title 40, C.F.R. Part 2, Subpart A.

EPA Freedom of Information Act Policy.

¹ There are three enforcement exclusions under the FOIA. Per the Roles and Responsibilities section below (Section 9), the General Law Office concurs on the use of these exclusions.

6. Procedures

Generally, the steps performed by the NFO are detailed in Steps 1–6, and the steps performed by the FOIA Programs (i.e., EPA Region or Headquarters Program Office) are detailed in Steps 7–18. Each FOIA Program must develop or update their local FOIA procedures to ensure that their internal FOIA processes are consistent with the procedures outlined below. A FOIA Program may expressly identify, by role, individuals that perform Steps 7–18 in their local FOIA procedures.

A. Intake Procedures

Step 1. Submission and Receipt of Requests.

The public will submit FOIA requests to the NFO via FOIAonline, U.S. Mail, or overnight delivery service, or an electronic government submission website established pursuant to 5 U.S.C. § 552(m), such as foia.gov, consistent with the Agency's FOIA regulations. If the NFO receives a request via U.S. Mail or overnight delivery service, the NFO will enter the request, including all attachments, into FOIAonline. If the requester provides an email address, FOIAonline will automatically send an acknowledgement email to the requester. If the requester does not provide an email address, NFO will issue an acknowledgement through U.S. Mail.

If a FOIA Program (i.e., EPA Region or Headquarters Program Office) receives a request directly from a requester, the FOIA Program should not process the request because it was not submitted in accordance with the FOIA Regulations. The FOIA Program should inform the requester that the request will not be accepted as a properly submitted FOIA request and inform the requester of the proper methods for submitting a FOIA request. *See generally* 40 C.F.R. § 2.101(a).

Step 2. Intake and Initial Review of Incoming Requests.

When the NFO receives a request, the NFO may consider generally whether:

- The request was not made in writing;
- The request does not comply with the FOIA Regulations;
- The request does not seek Agency records (*see also* Step 7, *Lead FOIA Program Review of the FOIA Request*); and
- The request does not reasonably describe the records sought (*see also* Step 7, *Lead FOIA Program Review of the FOIA Request*). 40 C.F.R. §§ 2.101(a) and 2.102(c).

The NFO may issue a final determination and close the request, as appropriate, upon initial review of the above factors. *See* Step 16, *Interim and Final Responses*. Additionally, the NFO may coordinate with the appropriate FOIA Programs when evaluating a request based on the matters above. *See* Step 3, *NFO and Lead FOIA Program Intake Coordination*. The NFO will notify the requester in writing of a decision made on these matters.

If the NFO does not issue a final determination on any of the above matters pursuant to 40 C.F.R. § 2.104(i), the Lead FOIA Program should consider these matters, as appropriate, in issuing its final determination. *See* Step 7, *Lead FOIA Program Review of the FOIA Request*.

The NFO may also review the request for the following circumstances that may be considered throughout the response process:

- Determine whether unusual circumstances apply to the request (*see also* Step 9, *Estimate Processing Time and Determine Response Deadline*); and
- Whether the requester has paid all fees for any prior FOIA requests as required by the regulations.

Step 3. NFO and Lead FOIA Program Intake Coordination.

This step discusses the coordination between the NFO and the Lead FOIA Program for FOIA request intake processing. If any of the issues identified in Step 2, *Intake and Initial Review of Incoming Requests*, require additional input from the Lead FOIA Program prior to the NFO taking action, the NFO may seek input from the FOIA Officer or Coordinator in the Lead FOIA Program, including but not limited to the following circumstances:

- The NFO believes the request does not seek Agency records;
- The NFO believes the request may not be reasonably described;
- The NFO believes that the processing of the request may benefit from clarification;
- The NFO requires more information to ensure proper assignment of the Lead FOIA Program; or
- The NFO believes the request may be fulfilled through publicly available or previously released records.

The NFO may take appropriate action, considering the response from the Lead FOIA Program. The NFO will coordinate with the Lead FOIA Program before stopping the clock; the clock may only be stopped once for clarification. *See* 40 C.F.R. § 2.104(d). If the FOIA requester responds to the EPA's request for clarification, the NFO will coordinate with the Lead FOIA Program on the response.

Step 4. Process Fee-Waiver and Expedited Processing Requests.

The NFO will determine whether to grant or deny fee waiver and expedited processing requests. The NFO will evaluate each fee waiver and expedited processing request using the factors outlined in 40 C.F.R. §§ 2.107(l)(2)-(3), and 2.104(f), respectively. The NFO will document all decisions to grant or deny fee waiver and expedited processing requests in FOIAonline. If the NFO grants expedited processing, the Lead FOIA Program must give the processing of the FOIA request priority and process it as soon as practicable. *See* 40 C.F.R. § 2.104(f)(4).

Step 5. Determine the Processing Track and Fee Category.

The NFO will initially indicate in FOIAonline the processing track and fee category based on available information, and the Lead FOIA Program may adjust based on information available during review and processing. The NFO will identify the processing track by distinguishing between a simple and complex request based on an evaluation of the amount of work, time needed to process the request, or both, including limits based on the number of pages involved. *See* Section 10, Definitions, *Complex Requests* and *Simple Requests*.

The NFO will initially assign the fee category for the requester. The fee categories under the FOIA are:

- Commercial Use Requester:
 - According to the OMB Fee Guidelines, “commercial use” requesters are those who ask for records for “a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is being made.” 52 C.F.R. §§ 10012, 10017–18 (Mar. 27, 1987).
- Educational Institution or Non-Commercial Scientific Institution:
 - Educational institutions include schools such as universities and vocational institutions whose purpose is scholarly research. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II).
 - Noncommercial scientific institutions are institutions whose purpose is scientific research. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II).
- Representative of the News Media:
 - The FOIA defines a “representative of the news media” as “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” The FOIA also explains that this category includes news agencies as well as freelance journalists if they “can demonstrate a solid basis for expecting publication through [a news media] entity, whether or not the journalist is actually employed by the entity.” *See* 5 U.S.C. § 552(a)(4)(A)(ii)(III).
- Other Requester:
 - The “other” category is simply a catchall category for any requester that does not fall into the above categories.

Step 6. Assign the Request to the Lead FOIA Program.

The NFO will assign the Lead FOIA Program by evaluating which FOIA Program (i.e., EPA Region or Headquarters Program Office) is likely to have the most records responsive to the request. Following the initial review described in Steps 2 and 3, the NFO will assign the request to the Lead FOIA Program in FOIAonline. A FOIA Coordinator or FOIA Officer may request that NFO reassign the request to another FOIA Program by contacting the NFO staff member that assigned the request initially. The NFO will resolve any assignment disputes between the FOIA Programs and, if appropriate, will reassign the request to the new Lead FOIA Program. Additionally, a Lead FOIA Program may also request reassignment of a FOIA request once documents are collected and the search results demonstrate that it may be more appropriate that the NFO assign another FOIA Program as the Lead FOIA Program.

The NFO will notify the requester that the NFO assigned the request to the Lead FOIA Program and include information for the staff contact in the Lead FOIA Program.

B. Processing the Request

Step 7. Lead FOIA Program Review of the FOIA Request.

After the NFO assigns a request to the Lead FOIA Program, the Lead FOIA Program is responsible for issuing the Agency's final decision on the FOIA request. The Lead FOIA Program may look to the description provided below for assistance if it is necessary to evaluate the matters in Steps 2 and 3.

First, a request is reasonably described if it enables an Agency employee familiar with the subject matter to locate the records with a reasonable amount of effort. *See generally* 40 C.F.R. § 2.102(c). The Lead FOIA Program will identify and coordinate with subject matter experts, as necessary, to determine whether the request reasonably describes the records sought.

If the Lead FOIA Program determines that the request is not reasonably described, the Lead FOIA Program will:

- Inform the requester that the request does not reasonably describe the records sought and either identify what additional information the requester needs to provide or explain why the request is otherwise insufficient;
- Provide the requester with an opportunity to discuss and modify the request;
- Provide a specific deadline that is at least 20 calendar days after the request for clarification, for the requester to provide clarification or additional information; and
- Inform the requester in writing that if no additional information is provided, EPA may issue a final determination closing the request.

Second, the Lead FOIA Program will ensure that the request seeks Agency records. If not, the Lead FOIA Program will notify the requester and close the request.

What is an Agency Record?

An Agency Record is:

- Created or obtained by the Agency; and
- Under Agency control when the request is received.

The FOIA does **not** require the Agency to:

- Create a new record or re-create records that were properly disposed;
- Produce records over which it retains no control;
- Produce purely personal records; or
- Produce future records.

Third, the Lead FOIA Program may need to take actions to, among other things, better understand what records are being sought or improve the Agency's ability to respond to the

How many times may I stop the clock to clarify the request?

The clock may only be stopped once to clarify the scope of the request—either by the FOIA Program or by the NFO as noted in Step 3. Once the clock has been stopped, it should not be restarted until the information or clarification is provided by the requester. Nevertheless, a FOIA Program may contact a requester as many times as needed to clarify the scope of the request without stopping the clock.

FOIA Programs should document all communications, including a description of the modified scope of the request, for the official record in FOIAonline. Further, the Lead FOIA Programs should ensure that FOIAonline reflects any updated deadlines.

request. For example, the Lead FOIA Program may evaluate whether clarification by the requester would benefit the processing of the request and if so, contact the requester. Subject matter experts in the Lead FOIA Program and any other FOIA Programs with applicable knowledge may aid in identifying what additional clarification is needed to process the FOIA request. The NFO is available to assist the Lead FOIA Program with seeking clarification from the requester.

The Lead FOIA Program may also review and adjust, as necessary, the processing track (i.e., simple or complex, but not expedited). *See* Section 10, Definitions, *Simple Request* and *Complex Request*.

Step 8. Assign Tasks in FOIAonline.

8.A. Assign EPA Search and Review Tasks.

The Lead FOIA Program will identify the individuals within the Lead FOIA Program who will assist in conducting the search and review tasks. The Lead FOIA Program will coordinate with other FOIA Programs who may have responsive records—i.e., Contributing FOIA Programs. The Contributing FOIA Programs will identify the staff in their programs who may have responsive records and provide that information to the Lead FOIA Program.

The Lead FOIA Program will coordinate with the designated criminal enforcement contact for their Region or Program Office, as appropriate based on the scope of the FOIA request, to identify any criminal enforcement staff who may have responsive records and to coordinate the collection and review of records involving these custodians. If any criminal enforcement staff are identified by a Contributing FOIA Program, the FOIA Officer or Coordinator in the Contributing FOIA Program will coordinate with their designated criminal enforcement contact regarding the collection and review of records involving these custodians. The Contributing FOIA Program will keep the Lead FOIA Program informed regarding the plan and progress of the review for criminal enforcement staff.

For a large, complex FOIA request, it is a recommended practice for the Lead FOIA Program to convene meetings with assigned staff in the Lead FOIA Program and any Contributing FOIA Programs to clarify responsibilities, methods to be used for collection, and other issues described in Steps 9–15. Those meetings may also include NFO staff, subject matter experts, Records Liaison Officers, information technology specialists, and legal counsel. If

necessary, the Lead FOIA Program may request NFO assistance in developing a search and review strategy in coordination with the Contributing FOIA Programs.

The Lead FOIA Program will ensure the proper tasks are assigned in FOIAonline, including to staff located in the Lead FOIA Program and to the FOIA Coordinator or FOIA Officer in each Contributing FOIA Program. The Lead FOIA Program will ensure that assignees complete and close all tasks. If necessary, the FOIA Manager, FOIA Coordinator, or FOIA Officer in the Lead FOIA Program may obtain NFO assistance in coordinating the completion and closing of tasks by the Contributing FOIA Programs.

Generally, the Lead FOIA Program will submit all eDiscovery Division centralized search requests—including for the custodians identified for Contributing FOIA Programs—and will review all potentially responsive records collected by the eDiscovery Division centralized search. See Step 12, *Collect Records* and Step 13, *Review Records* for a detailed discussion of collections and reviews. The Lead FOIA Program and any Contributing FOIA Programs should track the time it takes to complete the search, collection, and review tasks and enter that time and associated costs into FOIAonline. See Step 10, *Estimate Fees* for assistance on how to calculate fees.

8.B. Refer the Request or a Portion of the Request to Other Federal Agencies

A record that originated with another federal agency may be referred to that agency for direct response to the requester. The Lead FOIA Program must obtain the NFO's concurrence before referring a request, or portion of a request, to another federal agency. 40 C.F.R. § 2.103(c)(2).

If the referral is to a federal agency that uses FOIAonline, then the Lead FOIA Program should send the referral in FOIAonline. If the referral is to a federal agency that does not use FOIAonline, then the Lead FOIA Program should first send the referral either by email or mail and second document the communication making the referral in FOIAonline.

If the Lead FOIA Program refers the entire request to another federal agency, the Lead FOIA Program will notify the requester that the request has been referred and close the request. See Step 16, *Interim and Final Responses*. If the Lead FOIA Program refers only a portion of the request, the Lead FOIA Program will notify the requester that a portion of the request has been referred to another federal agency and continue processing the remaining portion of the request that is not referred. See the NFO SharePoint site for a list of NFO contacts for obtaining concurrence on referrals.

Step 9. Estimate Processing Time and Determine Response Deadline.

Lead FOIA Programs must issue a final determination on a properly submitted FOIA request (see Step 2, *Intake and Initial Review of Incoming Requests* and Step 7, *Lead FOIA Program Review of the FOIA Request*) within 20 working days of the date that the request is received unless unusual circumstances apply (excluding days the clock is stopped for clarification or fee related reasons). 5 U.S.C. § 552(a)(6)(A), (B). The Lead FOIA Program will determine the estimated processing time by discussing the scope of the request and estimated number of responsive documents with subject matter experts and other persons within the Lead FOIA Program and any Contributing FOIA Programs.

When the Lead FOIA Program or the NFO estimates that the response cannot be completed within 20 working days, the EPA may extend the due date if “unusual circumstances” apply, as defined by the FOIA, 5 U.S.C. § 552(a)(6)(B).

When do “Unusual Circumstances” apply?

An “unusual circumstance” exists when there is:

- (1) A need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;
- (2) A need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or
- (3) A need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the Agency having substantial subject-matter interest therein. 5 U.S.C. § 552(a)(6)(B)(iii).

If unusual circumstances exist and there is a need to extend the due date for 10 working days or less, the Lead FOIA Program or the NFO must, within the 20-working day time limit, notify the requester in writing setting forth the unusual circumstances and provide a new estimated due date. 5 U.S.C. § 552(a)(6)(B).

When one or more of the listed unusual circumstances result in a need to extend the due date for more than 10 working days, the Lead FOIA Program must:

- Notify the requester in writing that EPA cannot process the request within the time limit specified;
- Provide the requester an opportunity to limit the scope of the request in writing so that it may be processed within that time limit or negotiate a new time frame with the requester for processing the request or a modified request; and
- Provide the contact information for the EPA FOIA Public Liaisons and notify the requester in writing that it has the right to seek dispute resolution services from the Office of Government Information Services.

5 U.S.C. § (a)(6)(B)(ii).

The Lead FOIA Program will enter the new due date and the justification for the extension into FOIAonline. The justification should include whether an opportunity to clarify the request was provided to the requester. The Lead FOIA Program will communicate the new due date to the requester and document all communication in FOIAonline.

Step 10. Estimate Fees.

10.A. Fee Types and Requester Fee Categories.

The FOIA allows agencies to charge certain fees to a requester to process their FOIA request. The FOIA allows agencies to charge search, review, and duplication fees.

Requesters are placed into one of three fee categories. Which types of fees an agency may charge is based on the requester’s fee category. See *Step 5 Determine the Processing Track*

and Fee Category for a description of each type of requester fee category. While the NFO initially assigns a fee category, the Lead FOIA Program may also review and adjust the fee category, as necessary.

Types of Fees that May be Charged by Fee Category			
Type of Requester	Search	Review	Duplication
Commercial	Yes*	Yes	Yes
Educational, Non-Commercial Scientific, or News Media	No	No	Yes (100 pages free)*
All Others	Yes (First 2 hours free)*	No	Yes (100 pages free)
* Fees shaded in grey above cannot be charged if the Agency fails to comply with the response time period and the requirements of the FOIA Regulations, 40 C.F.R. § 2.107(d)(6).			

The Lead FOIA Program will estimate the request processing fees per the requirements outlined in 40 C.F.R. § 2.107. Contributing FOIA Programs will provide the Lead FOIA Program with the estimated fees from their respective FOIA Program. The Lead FOIA Program will communicate the estimated fees to the requester unless the estimated cost falls below the payment assurance provided by the requester, or the NFO granted a fee waiver.

Type of Staff	Charges
Clerical	\$4.00/quarter hour
Professional	\$7.00/quarter hour
Managerial	\$10.25/quarter hour

If EPA does not comply with the FOIA's time limits for responding to a request, EPA will not charge search fees, or, in the instance of educational institution, noncommercial scientific institution, or news media requesters, duplication fees, unless EPA gave the requester timely written notice that unusual circumstances as defined by the FOIA apply and more than 5,000 pages are necessary to respond to the request. *See* 40 C.F.R. § 2.107(d)(6)(ii), 5 U.S.C. 552(a)(4)(a)(viii)(II). In this situation, EPA must also have discussed with the requester by written mail, e-mail, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5 U.S.C. § 552(a)(6)(B)(ii), which includes notification to the requester of the availability of the FOIA Public Liaison and the right to seek dispute resolution services from the Office of Government Information Services.

10.B. Advance Payment, Assurance of Payment, and Stopping the Clock.

The Lead FOIA Program must provide written notice to requesters of anticipated fees more than \$25 if the requester did not agree to pay a higher amount in the initial FOIA request or subsequently. *See* 40 C.F.R. §§ 2.102(d), 2.107(e). EPA then requires a written assurance of payment from the FOIA requester, unless an advance payment was received. *See* 40 C.F.R. §

2.107(e). The requester may also designate a fee limit with their FOIA request. An assurance of payment is required if the estimated costs of processing the request exceed the fee limit.

The Lead FOIA Program may ask for advance payment of fees from the requester in two circumstances: (1) when the fees will exceed \$250 or (2) when the requester has previously failed to pay fees in a timely fashion. If you are working with a requester who has a history of prompt payment, you may simply ask for an assurance of payment. If you are working with a requester with no history of payment, you may either ask for a written assurance of payment or an advance payment. For requesters who have failed to pay in a timely manner in the past, you should ask for an advance payment.

The Lead FOIA Program may stop the clock as many times as needed for fee-related reasons, including when the requester is required to provide a written assurance of payment and has failed to do so. The Lead FOIA Program should notify the requester when the Lead FOIA Program stops the clock for fee-related reasons.

Step 11. Determine Search Parameters and Additional Clarification.

In response to a properly submitted FOIA request, FOIA Programs will conduct a search that is reasonably calculated to locate all relevant documents, including relevant hard-copy and electronic documents. The Lead FOIA Program, in coordination with all Contributing FOIA Programs, will determine where records responsive to the FOIA request may be located.

To determine which records are within the scope of a request, the Agency will ordinarily include only those records in its possession as of the date the request was received by one of the methods described in 40 C.F.R. § 2.101(a). The Lead FOIA Program will inform the requester if any other date is used. 40 C.F.R. § 2.103(a).

The Lead FOIA Program, in coordination with Contributing FOIA Programs, should consider whether there may be responsive hardcopy records and where those records may be located, including staff workspaces, Agency file rooms, and Agency records being maintained at one or more records centers.

If a FOIA request seeks records that may include electronic records, the Lead FOIA Program should coordinate with all Contributing FOIA Programs to identify all locations likely to contain potentially responsive records. Potential electronic repositories include, for example: Outlook email and calendars; chats (Skype or Teams); Lotus Notes mailboxes, calendars, and databases; Enterprise Content Management System (ECMS or EZ-records); the Correspondence Management System (CMS); local or shared computer drives; SharePoint sites; OneDrive; mobile devices (e.g., text messages and photographs); and external drives and discs. EPA organizations should submit search requests to collect electronic documents from the identified record source locations covered by the eDiscovery Division's centralized search, unless a more targeted collection is more likely to locate all responsive documents, such as where all responsive records are located in a specific folder within an email account.

The Lead FOIA Program will coordinate with all Contributing FOIA Programs to develop search parameters for the electronic searches based on an understanding of the scope of the request. Depending on the scope of the request, search parameters may include any of the following:

- Date Range;
- Custodians;
- Types of Records; or
- Keywords or Subject Matter.

The Lead FOIA Program may seek assistance from the eDiscovery Division or NFO staff in developing search parameters.

As previously stated in Step 8, it is a recommended practice to convene meetings with appropriate staff to clarify responsibilities and develop a collection plan for a large, complex FOIA request. See the FOIA Toolkit for additional assistance on conducting a reasonable search.

Step 12. Collect Records.

Utilizing the search parameters developed in Step 11, the Lead FOIA Program will ensure that a reasonable search for responsive records is conducted. Generally, the Lead FOIA Program will submit any necessary eDiscovery Division centralized search requests. The Lead FOIA Program may allow a Contributing FOIA Program to submit a centralized search request if:

- The request has two or more distinct parts requesting records that are solely associated with a Contributing FOIA Program, and the requester does not agree to resubmit the parts as separate requests;
- The request includes custodians from the OIG, the Office of Criminal Enforcement, Forensics and Training (OCEFT), or Regional Criminal Enforcement Counsel (RCEC) (see Step 8.A., *Assign EPA Search and Review Tasks*); or
- The Contributing FOIA Program agrees to submit the eDiscovery Division centralized search request.

The eDiscovery Division will process the centralized search request and will load the collected records into Relativity for review. For information on what sources the eDiscovery Division will not collect from, please visit the eDiscovery Division's SharePoint site.

Second, the Lead FOIA Program will assign tasks in FOIAonline to the appropriate individuals within the Lead FOIA program and to the FOIA Officer or Coordinator in any Contributing FOIA Programs, as necessary, for the collection of records from local sources, including hard copies and any electronic record source locations not included in the centralized search conducted by the eDiscovery Division. If necessary, the Lead FOIA Program may obtain NFO assistance with developing a collection strategy in coordination with the Contributing FOIA Programs.

Step 13. Review Records.

13A. Develop and Implement a Review Strategy.

The review of records collected by the eDiscovery Division centralized search will be conducted in Relativity to enhance the efficiency and consistency of the review. The Lead FOIA Program will review the potentially responsive records collected by the eDiscovery Division centralized search to determine whether the records are responsive or any exemptions from disclosure apply, unless:

- A Contributing FOIA Program agrees to assist with the review; or
- A Contributing FOIA Program submitted the eDiscovery Division centralized search pursuant to Step 12.

Contributing FOIA Programs are expected to work with the Lead FOIA Program in developing the review strategy and encouraged to assist with the review, considering:

- The number of records associated with each FOIA Program (i.e., EPA Region or Headquarters Program Office);
- The extent records associated with a Contributing FOIA Program overlap those associated with the Lead FOIA Programs;
- Whether a Contributing FOIA Program has specific resource issues that would limit its ability to timely complete the review; and
- The extent to which distributing review of records among the Lead FOIA Program and Contributing FOIA Programs would lead to greater consistency or efficiencies, such as accelerating equity reviews.

The appropriate criminal enforcement point of contact(s) will conduct an initial review of all records collected from criminal enforcement staff to segregate out any law enforcement sensitive records. If records relating to criminal enforcement staff or matters are located during the review, the Lead FOIA Program will coordinate with the designated criminal enforcement contact in their region or office, and with the FOIA Officer or Coordinator and designated criminal enforcement contact in the appropriate Contributing FOIA Program to develop and implement a review plan for these records.

For the review of any records collected from a local source, *see Step 12, Collect Records*, the Lead FOIA Program and any Contributing Programs will implement a consistent review strategy.

If necessary, the FOIA Programs may reach out to the NFO for advice about developing a review strategy and to assist in elevating concerns regarding Lead FOIA Program and Contributing FOIA Program responsibilities.

Contributing Programs are also expected to conduct a review of any records in which they have an equity interest. *See Step 13.C, Equity Review and Consultation.*

13B. Determine Which Records (or Portions) May Be Released.

All records released or withheld in response to a FOIA request should be reviewed by at least two knowledgeable individuals, including one manager or supervisor, to ensure openness, transparency, consistency, and the appropriate application of FOIA exemptions. One of the

reviews may be performed by the individual who processes the request. Only Authorized Officials may issue final determinations under 40 C.F.R. § 2.103(b).

The FOIA requires that “any reasonably segregable portion of a record” must be released “after deletion of the portions which are exempt” under the Act’s nine exemptions. *See* 5 U.S.C. § 552(b). In such circumstances, the Lead FOIA Program and Contributing FOIA Programs must take reasonable steps necessary to segregate and release nonexempt information. EPA organizations may make discretionary disclosures of exempt information, as a matter of administrative discretion, where they are not otherwise prohibited by law from doing so.

A responsive record may be withheld per one of the nine exemptions of the FOIA. *See* 5 U.S.C. § 552(b). EPA Organizations may not redact non-responsive information within a responsive FOIA record. Where a FOIA requester has narrowed their request to exclude non-responsive information within a responsive record, such narrowing should be memorialized in writing to ensure clarity.

If a discretionary FOIA exemption—exemptions 2, 5, 7(a)–(b), 7(d)–(f), 8 and 9—is implicated, the Lead FOIA Program and Contributing FOIA Programs should only withhold records, or portions of records, when they reasonably foresee that disclosure would harm an interest protected by one of the exemptions or when disclosure is prohibited by law. *See* 5 U.S.C. § 552(a)(8)(A)(i). Note, however, “that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested.” 5 U.S.C. § 552(b)(1)(A)(5).

The Lead FOIA Program and Contributing FOIA Programs will: 1) ensure that information cannot be read through redactions on photocopied records; 2) remove “hidden” metadata as appropriate (e.g., Microsoft Excel document properties) from copies of records prepared for release; and 3) annotate records with any applicable FOIA exemptions at the location of the redacted information.

The Lead FOIA Program and Contributing FOIA Programs may consult with the NFO, their Office of Regional Counsel (ORC), or the General Law Office (GLO) about withholding of records under a FOIA exemption. The Lead FOIA Program and Contributing FOIA Programs may consult with an NFO, ORC, or GLO attorney on questions about withholding records under FOIA Exemption 4. The Lead FOIA Program and Contributing FOIA Programs should consult with an ORC or GLO attorney concerning the requirements of 40 C.F.R. Part 2, Subpart B.

13C. Equity Review and Consultation

The Lead FOIA Program or, where appropriate, the Contributing FOIA Programs will make records available for review to another EPA organization when the documents include information of substantial interest to that office. Substantial interest includes documents that were created in that office, emails involving personnel from that office, and opinions or advice given by an attorney in a legal office. This review is an “equity review.”

The Lead FOIA Program (i.e., EPA Region or Headquarters Program Office) should task equity reviews to other EPA organizations in FOIAonline. The Lead FOIA Program should schedule sufficient time for the other EPA organizations to complete the equity review. If necessary, the FOIA Coordinator or Officer in the Lead FOIA Program will contact the NFO for assistance in coordinating the completion of equity review tasks.

The Lead FOIA Program or, where appropriate, the Contributing FOIA Programs will make records available for review to another federal agency or the White House when the documents include information of substantial interest to that agency or the White House. Substantial interest includes documents that were created by that agency, emails involving personnel from that agency, and opinions or advice given by an attorney in a legal office. This review is called a “consultation.”

The Lead FOIA Program will coordinate with the NFO when there are consultations with other federal agencies. In performing consultations, the Lead FOIA Office will:

- Concurrently notify the NFO in writing for any consultation sent to an individual below the Deputy Assistant Secretary-level and will obtain the NFO’s concurrence prior to any consultation sent to an individual at the Deputy Assistant Secretary-level or higher, except for the OIG; and
- Contact the NFO for instructions on how to complete consultations with the White House.

The FOIA Coordinator or Officer in the Lead FOIA Program may contact the NFO for assistance in coordinating the completion of consultations with other federal agencies.

Step 14. Authorized Official Approval and Awareness Notification.

The Lead FOIA Program will obtain approval from an Authorized Official before releasing or withholding any records. 40 C.F.R § 2.103(b). *See Step 16, Interim and Final Responses.*

If a request is designated for awareness notification, the Lead FOIA Program will follow the instructions outlined in the Awareness Notification memo before releasing records in FOIAonline. *See Memorandum, Ryan Jackson, Chief of Staff, EPA, Awareness Notification Process for Select Freedom of Information Act Releases* (Nov. 16, 2018).

Step 15. Upload Records to FOIAonline.

The Lead FOIA Program and Contributing FOIA Programs will upload all responsive records into FOIAonline, including:

- Responsive records that will be released to the public;
- Records that are responsive but are being withheld in full per one or more FOIA exemptions; and
- The original, unredacted version of any record that is being released with redactions.

Responsive records that are being withheld in full and original, unredacted versions of any records that are being released with redactions should be coded appropriately in FOIAonline so that access is limited to EPA staff (see the FOIA Toolkit for instructions on how to code records in FOIAonline).

FOIA Programs will release responsive records to the public through FOIAonline except where:

- The records are subject to special handling requirements or policies, including CBI;
- Release to the public will create a potential harm protected by a FOIA exemption (e.g., requests for agency records from requesters about themselves which would harm the requester's privacy interests if released to the public); or
- A waiver of the requirement to release the records in FOIAonline is granted by the NFO (e.g., unable to load a specific record due to file-type restrictions, such as a video, computer model, or large image file).

If records provided in response to a request are not released to the public in FOIAonline because of the waiver exception outlined above, a placeholder document should be uploaded with contact information describing how to obtain a copy of the response.

It is important to upload all responsive records to FOIAonline, including those that are not releasable. Uploading records that will be withheld preserves the entire record so that it may be reviewed in full on appeal or during litigation. If a FOIA Program chooses to maintain non-releasable responsive records in another manner pursuant to EPA's FOIA records retention schedule, Schedule 1049, the FOIA Program should provide a notation in FOIAonline that identifies where such records are maintained. See the FOIA Toolkit for instructions for uploading documents into FOIAonline.

Step 16. Interim and Final Responses

Lead FOIA Programs should consider issuing interim responses when a request involves a voluminous amount of records and for a request that will take an extended time to process. See the FOIA Toolkit for template language for interim response letters.

When issuing a final response, the following dispositions are available in FOIAonline and one must be selected:

- All Records Referred to Another Agency. The EPA searched for records, and the records all belonged to another agency. The records were referred to the other agency for direct response to the requester and the request was closed out.
- Duplicate Request. In some instances, a requester submits more than one request with the same scope. EPA will process one of the requests and close the other request as a duplicate request upon notice to the requester.
- Records Not Reasonably Described. The EPA reached out to the requester indicating that the request did not reasonably describe the records sought, and the requester failed to provide the additional information necessary to clarify the scope of the request.
- Not an Agency Record. The EPA reached out to the requester indicating that the request is not seeking Agency records, and the requester failed to identify the Agency records sought.
- Full Grant. All responsive records are being released in full to the requester.
- Full Denial Based on Exemptions. All records will be withheld from release pursuant to one or more FOIA exemptions.

- Fee-Related Reasons. The request is being denied for a fee-related reason, such as:
 - EPA reached out to the requester to obtain payment assurance based on the Agency's estimated fees to process the request, and the requester has failed to provide a payment assurance; or
 - The requester has not paid all fees for a prior FOIA request as required by the regulations.
- Glomar Response. In some instances, the EPA may expressly refuse to confirm or deny the existence of records responsive to a FOIA request; this is called a Glomar response. The Lead FOIA Program, except for the OIG, must obtain approval from OGC or ORC prior to issuing a Glomar response.
- No Records. If, after a reasonable search likely to uncover all responsive documents, no records are located that are responsive to the request, the requester will be informed in writing.
- Partial Grant/Partial Denial. Portions of the record will be withheld from the requester if covered by either one or multiple FOIA exemptions. The portions of the record that are not redacted are released to the requester.
- Request Withdrawn. The requester voluntarily withdraws the FOIA request
- Improper FOIA Request for Other Reasons. The request is being denied because it was not properly submitted per the Agency's FOIA regulations.
- Other.

In addition, if a final response is also a final determination pursuant to 40 C.F.R. §§ 2.103(b), the final determination letter will include:

- The name and title or position of the person responsible for the determination;
- A brief statement of the reason or reasons for the denial, including an identification of records being withheld (either individually or, if a large number of similar records are being denied, described by category) and any FOIA exemption applied by the office in denying the request;
- An estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through annotated deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption;
- A statement that an adverse determination may be appealed under 40 C.F.R. § 2.104(j) and description of the requirements for submitting an administrative appeal; and
- A statement that the requester has the right to seek dispute resolution services from an EPA FOIA Public Liaison or the Office of Government Information Service. 40 C.F.R. § 2.104(i).

Step 17. Finalize Processing Fees.

The Lead FOIA Program will inform the requester in the final determination letter if fees for processing the request are less than EPA's minimum billable threshold (i.e., equal to or less than \$14.00). If the processing fees exceed EPA's minimum billable threshold (i.e., greater than \$14.00), the Lead FOIA Program will generate an invoice in FOIAonline.

The EPA is required to document actual fees charged to the public (billable) and the administrative costs (unbillable) incurred by the Agency in processing FOIA requests. Lead FOIA Programs should document billable and unbillable costs in the Administrative Cost section in FOIAonline. If not completed as part of an earlier step, the Lead FOIA Program and all Contributing FOIA Programs working on a request will enter their administrative time and costs in FOIAonline. *See Step 10, Estimate Fees.*

Step 18. Finalize Actions and Respond to Request.

The Lead FOIA Program will ensure that all releasable records are uploaded into FOIAonline even if the records were provided to the requester via U.S. mail, except where an exception outlined in Step 15, *Upload Records to FOIAonline* applies. In addition, the Lead FOIA Program will ensure all supporting documentation is entered in FOIAonline (e.g., communications and notes regarding search criteria and coordination between the Lead FOIA Program and Contributing FOIA Programs).

The Lead FOIA Program will provide the final determination letter, responsive records coded for release, and the billing invoice, when applicable, to the requester through FOIAonline. If the requester provides an email address, the Lead FOIA Program will notify the requester via FOIAonline that the responsive records are available in FOIAonline. Otherwise, the Lead FOIA Program will provide the response package via U.S. mail.

7. Appeals and Litigation

Within 90 days of the Agency's final FOIA determination, the FOIA requester may file an administrative appeal of that determination. The FOIA requester may also seek judicial relief by filing a complaint in United States District Court after the Agency issues an administrative appeal decision or if the Agency does not respond to a FOIA request or administrative appeal within the statutory time frame. The General Law Office handles appeals and litigation related to FOIA requests.

In cases where the FOIA requester is determined to be a prevailing party, and the EPA is required to pay legal fees, please refer to the Office of the Chief Financial Officer's FOIA Fee Policy, RMDS 2540-04-P2.

8. Related Documents

Statutes, Regulations, and Policy

- EPA FOIA Regulations, 40 C.F.R. Part 2, Subpart A.
- U.S. Department of Justice Mark-up of the FOIA to highlight all amendments, <https://www.justice.gov/oip/freedom-information-act-5-usc-552> (last accessed October 2, 2019).
- Freedom of Information Act Policy.
- Chief Information Officer Policy 2171, EPA Information Access Policy.
- Chief Information Officer Policy 2155.4, Interim Records Management Policy.

Procedures and Guidance

- About the Office of Government Information Services (OGIS), <http://www.archives.gov/ogis/about-ogis.html> (last accessed October 2, 2019)
- CIO Policy 2171-p-01, EPA Information Access Procedures.
- CIO XXXX-P-XX, Discovery Services Search and Review Procedure.

9. Roles and Responsibilities

Authorized Officials – The Administrator, Deputy Administrators, Assistant Administrators, Deputy Assistant Administrators, Regional Administrators, Deputy Regional Administrators, General Counsel, Deputy General Counsels, Regional Counsels, Deputy Regional Counsels, and Inspector General, or those individuals' delegates, are authorized to make final determinations required by 5 U.S.C. § 552(a)(6)(A). *See* 40 C.F.R § 2.103(b).

Chief FOIA Officer – At the EPA, the General Counsel is the Chief FOIA Officer. *See* Delegations Manual, Delegation 1-131, *Chief Freedom of Information Act Officer* (Sept. 11, 2018). The Chief FOIA Officer is responsible for ensuring the efficiency and effectiveness of the Agency's FOIA administration, including compliance, accountability, and reporting to the Administrator, the Department of Justice and the Office of Management and Budget on the status of the Agency's FOIA Program.

Contributing FOIA Program – Another Regional or Headquarters Program office that may possess records, which are responsive to a request assigned to the Lead FOIA Program. A Contributing FOIA Program is responsible for the following core functions:

- Complete and close all assigned search, collection, and review tasks in a timely manner, including local electronic and hardcopy searches;
- Coordinate with the Lead FOIA Program to identify subject matter experts, custodians, record source locations, including electronically stored information, search terms, date range and other search criteria for centralized searches performed by the eDiscovery Division;
- Assist the Lead FOIA Program with document reviews, as appropriate; and
- Enter administrative costs into FOIAonline, as necessary.

The Contributing FOIA Program's FOIA Officer or Coordinator may assign tasks to the appropriate division or branch within the Contributing FOIA Program for completion. The Contributing FOIA Program will identify the staff who will assist in conducting the search and review tasks.

eDiscovery Division – The eDiscovery Division provides an electronic centralized search service to support the Agency's Program and Regional Offices in responding to litigation, FOIA requests, congressional inquiries and other formal requests for Agency information.

FOIA Coordinator or FOIA Officer – Each FOIA Program (i.e., EPA Region or Headquarters Program Office) shall have a FOIA Coordinator or FOIA Officer who serves as the primary contact for the NFO and other FOIA Programs. The primary function of the FOIA Coordinator or FOIA Officer is to ensure:

- The proper assignment of a request within their FOIA Program;

- That proper staff are assigned to process the FOIA request;
- The timely processing of a FOIA request in accordance with the FOIA, the FOIA Regulations, the Agency's FOIA Policy, and these Procedures; and
- That reports are properly and timely submitted to the NFO.

Additional duties to be performed by the FOIA Coordinator or FOIA Officer may be detailed in the FOIA Program's local procedures.

FOIA Manager – A FOIA Manager is a GS-14 level or higher manager who is specifically assigned to oversee prompt processing of FOIA requests by a FOIA Program. A FOIA Manager is also responsible for the duties listed in the Managers and Supervisors role.

FOIA Professionals – All FOIA Managers, FOIA Officers, FOIA Coordinators or other EPA employees, contractors, or grantees who interact with FOIA requesters or perform FOIA processing activities as part of their regularly assigned duties or in accordance with their contract or grant.

FOIA Programs – See “Headquarters or Regional FOIA Programs.”

FOIA Public Liaisons – EPA “supervisory officials to whom a requester under [the FOIA] can raise concerns about the service the requester has received from the FOIA Requester Service Center, following an initial response from the FOIA Requester Center Staff. FOIA Public Liaisons shall be responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.” 5 U.S.C. § 552(l). At the EPA, the FOIA Public Liaisons are the Associate General Counsel for the National FOIA Office and any supervisor designated as a FOIA Public Liaison by the Chief FOIA Officer or the Associate General Counsel for the National FOIA Office.

FOIA Requester Service Center – The FOIA Requester Service Center (FOIA Hotline) provides members of the public with information on the status of their request, on how and where to submit a FOIA request, and the types of information available on EPA's websites. The FOIA Public Liaisons and the National FOIA Office's staff members make up the FOIA Requester Service Center.

General Law Office – The General Law Office (GLO) within the EPA's Office of General Counsel is responsible for the following FOIA functions:

- Provide FOIA legal counseling, including on the applicability of FOIA exemptions;
- Concur on the use of 5 U.S.C. § 552(c)
- Adjudicate FOIA appeal determinations;
- Provide legal counsel to support the Agency's defense in FOIA litigation proceedings;
- Provide and support FOIA training; and
- Review CBI substantiations, and issue determinations for TSCA and FIFRA CBI claims, and CBI claims originating in Headquarters.

Headquarters and Regional FOIA Programs (FOIA Programs) – The Office of the Administrator, each EPA assistant administrator-level Headquarters office, and each EPA Region. Each FOIA Program shall have a FOIA Coordinator or FOIA Officer who serves as the primary contact for the NFO and other FOIA Programs. Any further assignment of FOIA

processing responsibilities and tasks within a FOIA Program should be addressed in the FOIA Program's local procedures.

Lead FOIA Program – The FOIA Program assigned the FOIA request by the NFO. The Lead FOIA Program is responsible for the following core functions:

- Serve as the primary contact for FOIA requesters;
- Assign review tasks, and search tasks for hardcopies and records that are not collected through the eDiscovery Division centralized search, to staff within the Lead FOIA Program and to the FOIA Officer or Coordinator in any Contributing FOIA Program;
- Submit all necessary centralized searches to the eDiscovery Division and ensure that all necessary search and review tasks are completed;
- Coordinate referrals, consultations, equity reviews, and awareness notifications; and
- Release records that are responsive and properly reviewed in FOIAonline, as appropriate, prepare and issue interim response and final determination letters, send invoices, and close out FOIA requests.

The Lead FOIA Program's FOIA Officer or Coordinator may assign the request to the appropriate division or branch within the Lead FOIA Program for processing. The Lead FOIA Program will identify the staff who will assist in conducting the search and review tasks. The Lead FOIA Program will contact each Contributing Programs' FOIA Officer or Coordinator to coordinate Contributing FOIA Program search and review tasks.

Managers and Supervisors – EPA managers and supervisors are accountable for ensuring that staff responding to FOIA requests have the knowledge, skills, abilities, resources, and time to perform their duties, which includes responding in a thorough and timely manner to requests, and ensuring both the protection of confidential and privileged information and the Agency's compliance with all applicable laws, regulations, policies and Executive Orders. Additionally, EPA managers and supervisors are responsible for the following functions:

- Conducting a second-level review of the documents to ensure compliance with the FOIA, including application of exemptions, prior to releasing records;
- Ensuring the issuance of timely and well-reasoned interim responses and final determinations responding to the request; and
- Actively assisting with related appeals and litigation.

National FOIA Office – The National FOIA Office (NFO) is designated by the Chief FOIA Officer. *See* 40 C.F.R. § 2.100(c). The Associate General Counsel for the NFO is delegated the authority to perform and oversee the functions assigned to the NFO. The NFO coordinates and administers the Agency's FOIA implementation, including but not limited to: assigning requests to a Lead FOIA Program; issuing expedited processing and fee waiver determinations; developing EPA's FOIA Policy and Procedures; reviewing FOIA Programs' local procedures; counseling on processing and responding to FOIA requests, including on the applicability of FOIA exemptions; preparing quarterly and annual reports to the Department of Justice; coordinating with the Office of Government Information Services and DOJ's Office of Information Policy; and providing FOIA training, support and assistance to Agency employees, FOIA Professionals, and Managers and Supervisors.

Office of General Counsel – The Office of General Counsel (OGC) is responsible for exercising the authorities assigned to the Chief FOIA Officer, the NFO, and the General Law

Office. Under the direction of the General Counsel, the OGC provides direction, oversight, and support for FOIA processing throughout the Agency.

Office of Inspector General – On FOIA matters pertaining to the Office of Inspector General (OIG), including the collection and review of records in the custody and control of the OIG, OIG and the Counsel to OIG perform the following functions: issue determinations on FOIA appeals, and confidentiality determinations, except when a conflict of interest arises as described in the EPA FOIA Regulations; provide counsel on FOIA exemptions; and assist the DOJ attorneys in FOIA litigation. The OIG will comply with these Procedures and the FOIA Policy to the extent it does not conflict with the Inspector General Act, as amended.

Office of Regional Counsel Attorneys – Regional attorneys provide legal counsel to regional staff who have been assigned to assist and review records with respect to a FOIA response and perform at least the following functions:

- Review documents for consistent and correct application of exemptions, as appropriate;
- Assist in communications with the requester, as necessary and appropriate on a case-by-case basis, to clarify a request, determine appropriate search terms, and negotiate deadlines for response, among other things;
- Assist in preparation of FOIA response letters that assert one or more FOIA exemptions;
- Review CBI substantiations and coordinate with the Regional Counsel to issue CBI determinations;
- Coordinate with attorneys in OGC to ensure nationwide consistency of legal interpretations, as necessary; and
- Actively assist with FOIA appeals and litigation.

Subject Matter Experts – Subject matter experts are staff who have knowledge regarding the scope of a FOIA request and responsive documents. Subject matter experts will assist in identifying, locating, and reviewing records potentially responsive to a FOIA request.

10. Definitions

Administrative Appeal – An independent review of and adverse determination made in response to a FOIA request. The GLO generally handles administrative appeals, except that the NFO handles administrative appeals of adverse determinations made by the GLO and the Office of Inspector General handles appeals of adverse determinations made by the Office of Inspector General. *See* 40 C.F.R. § 2.104(j).

Agency Records – An agency record subject to FOIA includes records, in any format including electronic, that are either created or obtained by an agency, and under agency control at the time of the FOIA request regardless of whether they are considered Federal Records under the Federal Records Act.

Commercial Use – A type of request from or on behalf of a person who seeks information for a use or purpose that furthers the requester's commercial, trade, or profit interests, which may include furthering those interests through litigation. *See* 52 Fed. Reg. 10012 (March 27, 1987).

Complex Request – A complex request typically requires an increased amount of work, additional time needed to process the request, or both, including limitations based on the number of pages involved. *See also* Definitions, *Simple Request*.

Consultation – When an agency locates records that either “originated with the agency, but which contain within them information of interest to another agency or another component [within their agency],” or “originated with an entity that is not itself subject to the FOIA” and “consults with that other agency, or equity holder, to obtain its views prior to disclosure of the records.” *See* Department of Justice Office of Information Policy Guidance, *Referrals, Consultations, and Coordination: Procedures for Processing Records When Another Agency or Entity Has an Interest in Them*.

Educational Institution – A preschool, public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education or an institution of vocational education, “whose purpose is scholarly. . . research.” *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II).

Expedited Processing – The processing of a FOIA request or appeal out of the order in which it was received and prioritized over other pending FOIA requests “whenever EPA determines that such requests or appeals involve a compelling need, as follows: (i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or (ii) An urgency to inform the public about an actual or alleged Federal government activity, if the information is requested by a person primarily engaged in disseminating information to the public.” 40 C.F.R. § 2.104(f).

Fee Categories – Categories under FOIA that determine assessments of fees to requesters. Requesters fall into one of four fee categories: (1) commercial requesters; (2) educational or noncommercial scientific institutions; (3) representatives of the news media; and (4) all other requesters (i.e., requesters who do not fall into any of the other four categories).

Fee Waiver – A request made to an agency to waive any applicable fees for its processing of a FOIA request. Fee waivers are limited to situations in which a requester can show that the disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government and is not primarily in the commercial interest of the requester. Requests for a fee waiver are evaluated on a case-by-case basis consistent with the statutory requirements.

FOIA Exemptions – Pursuant to 5 U.S.C. § 552(b), the nine enumerated exemptions to the statutory requirement that agencies make records available in response to a FOIA request. *See* 5 U.S.C. § 552(b)(1)–(9).

Full Denial – An agency decision not to release any responsive records in response to a FOIA request because the records are exempt in their entirety under one or more of the FOIA exemptions.

Full Grant – An agency decision to disclose all responsive records in full in response to a FOIA request.

Glomar Response – An agency’s express refusal to confirm or deny the existence or non-existence of records responsive to a FOIA request because confirmation of the existence of a record would reveal protected information.

Media Requester – “[A]ny person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. In this clause, the term ‘news’ means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of ‘news’) who make their products available for purchase by or subscription by, or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the Government may also consider the past publication record of the requester in making such a determination.” 5 U.S.C. § 552(a)(4)(A)(i)(II).

Non-Commercial Scientific Institution – An institution that is not operated on a commercial basis but “whose purpose is . . . scientific research,” the results of which are not intended to promote any particular product or industry. *See* 5 U.S. C. § 552(a)(4)(A)(ii)(II).

No Records Response – A FOIA request for which no responsive records were located.

Partial Grant/Partial Denial – Portions of the record will be withheld from the requester if covered by either one or multiple FOIA exemptions. The portions of the record that are not redacted are released to the requester.

Redact – The act of removing or obscuring exempt information from copies of responsive documents either manually or utilizing redaction software.

Referral – When an agency locates records that “originated with another agency” and “refers records for direct handling to [that other agency].” *See* Department of Justice Office of Information Policy Guidance, *Referrals, Consultations, and Coordination: Procedures for Processing Records When Another Agency or Entity Has an Interest in Them*.

Requester – Any individual (including non-U.S. citizens), corporation or association, public interest group, or state, local, tribal, or foreign government making a FOIA request. Requests from federal agencies, the Government Accountability Office, or Congress (e.g., the Speaker of the House, the President of the Senate, or the chair of a committee or subcommittee when acting on behalf of their committee or subcommittee) are not covered under FOIA.

Simple Request – A FOIA request that an agency anticipates may be processed without an increased amount of work, additional time, or both, including consideration of the number of pages involved. *See also* Definitions, *Complex Request*.

Unusual Circumstances – When there is a: “(1) need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; (2) need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or (3) need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.” 5 U.S.C. § 552(a)(6)(B)(iii).

11. Material Superseded

Chief Information Officer 2157-P-01.1, Procedures for Responding to Freedom of Information Act (FOIA) Requests.

12. Additional Information

This document is not intended to create any rights or privileges for the public, or obligations on the part of EPA.

DAVID FOTOUHI Digitally signed by DAVID
FOTOUHI
Date: 2020.11.06 14:40:21 -05'00'

David Fotouhi

Acting General Counsel and Chief Freedom of Information Act Officer

U.S. Environmental Protection Agency